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No. 87-1090

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ANANT B. GOEL, ZARINA A. GOEL,
COMPUTOMAT, INC.,
Petitioners,

v.

ENTRE COMPUTER CENTERS, INC.,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the district court properly applied the well-settled principles of *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639 (1976), and properly exercised its inherent power to protect the integrity of the judicial process, in deciding to enter an order of default and dismissal against petitioners as a sanction for discovery abuse.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent Entre Computer Centers, Inc. respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the judgment of the United States Court of Appeals for the Third Circuit, which affirmed the judgment of the United States District Court for the District of New Jersey.

STATEMENT OF THE CASE

This case concerns a district court's exercise of its discretion to impose the sanction of default and dismissal upon petitioners pursuant to Fed.R.Civ.P. 37

and the court's inherent power to preserve the integrity of the judicial process. In so acting, the court noted, "There is no reported case of which I am aware which deals with party misconduct as egregious as that which has occurred and is occurring in this case." Pet. at A40.[1] The decision was supported by a detailed 51-page opinion (pet. at A8-51) and was affirmed by the Third Circuit for the reasons stated in that opinion. None of the district court's findings of fact have been challenged by petitioners. The court's decision comports with well-established case-law and with the Federal Rules, and presents no error or novel question of law that warrants review by this Court.

The case was filed by respondent Entre Computer Centers, Inc., a franchisor of retail computer centers, on July 10, 1984, in the United States District Court for the Eastern District of Virginia, naming as defendants Entre's franchisees Anant B. Goel ("Goel") and his wife Zarina A. Goel, and their wholly owned corporation, Computomat, Inc. The action was subsequently transferred to the District of New Jersey. Pet. at A9.

The complaint contained counts for fraud, breach of contract, unfair competition, and violations of the Racketeer Influenced and Corrupt Organizations Act. Petitioners answered and asserted counterclaims alleging breach of contract, fraud, wrongful termination, and antitrust and RICO violations. Pet. at A9.

In October 1984, the district court entered a preliminary injunction in favor of Entre terminating the

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[1] Citations to "pet. at ___" refer to petitioners' brief and its appendices.

petitioners' franchise based on "conclusive" evidence of fraud.[2] The injunction provided for conveyance of the business premises and an orderly turnover of inventory to Entre; it also specifically enforced the terms of a post-termination covenant-not-to-compete, which was a part of the relief requested by Entre in its complaint. Pet. at A16-17.

A series of hearings in the Fall of 1984 established that Anant Goel and Computomat had willfully violated both the injunction and a subsequent bench order regarding the inventory, and that Goel had repeatedly committed perjury when testifying about compliance with those orders. On February 25, 1985, the court held Goel and Computomat in contempt and referred the matter to the United States Attorney for appropriate action. Entre was awarded attorneys' fees and costs incurred in connection with the contempt proceedings. Pet. at A17-18. Based on subsequent evidence, the court later would find that Zarina Goel also should have been held in contempt. Pet. at A37.

In the interim, on January 22, 1985, Computomat—the corporate shell through which the Goels operated their Entre franchise—filed a bankruptcy petition under Chapter 11 of the Bankruptcy Code. Computomat's nominal participation in the litigation ceased until it "rejoined" the proceedings on its own motion on February 14, 1986.

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[2] Petitioners apparently now question the district court's holding that "[t]he evidence establishes conclusively, and essentially without contradiction, that since at least mid-1983 defendants have systematically and continuously perpetrated a major fraud upon plaintiff" (pet. at A16). *See id.* at 3. They did not challenge this holding on appeal.

In May 1985, Entre served two sets of interrogatories and requests for production of documents upon the Goels; they were ignored, prompting a motion to compel that was granted on July 29, 1985, by the magistrate who was overseeing the pretrial proceedings. Citing the Goels' history of litigation misconduct, the magistrate ordered a series of escalating fines in the event of noncompliance, and provided that Entre might move for their arrest should they fail to comply by August 8. Even so, discovery responses were not served until August 9, 1985, and fines were imposed.[3] Pet. at A10.

The Goels then ignored a court order to participate in the preparation of a joint pretrial statement, which was to be filed in September 1985. The Goels filed no pretrial statement at all. Pet. at A47.

Based on the inadequacy of the discovery responses that finally were served by the Goels and on their failure to file a pretrial statement, Entre filed a motion to dismiss and for a default judgment pursuant to Rules 37(b)(2)(C) and (d) of the Federal Rules of Civil Procedure. While the motion was pending and with the aid of new attorneys who were substituted for one of the two firms then providing their counsel, the Goels filed "supplemental" answers to a few of the interrogatories. Pet. at A10.

On December 2, 1985, the magistrate issued a Report and Recommendation applying the criteria established in *National Hockey League v. Metropolitan*

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[3] Petitioners incorrectly state that they were not required to provide answers until August 11, 1985, thereby creating the misimpression that they answered the interrogatories early and without incurring fines. Pet. at 5.

Hockey Club, Inc., 427 U.S. 639 (1976) and *Poulis v. State Farm Fire and Casualty Co.*, 747 F.2d 863 (3d Cir. 1984), and concluding that the district court should grant Entre's motion as a sanction for the Goels' failure to comply with discovery orders and for their filing of inadequate answers that were interposed solely "to stave off their arrest." Pet. at A10-11.

On January 8, 1986, the district court ruled that although it had "no doubt . . . that the recommendations of the magistrate were the proper ones," it would give the Goels "one final opportunity" to avoid dismissal and default, expressly conditioned on their filing "fully responsive answers" to interrogatories and producing all identified documents. The court held that supplemental responses notwithstanding, the entire response was still "grievously deficient." Pet. at A11.

In February 1986, the Goels served new interrogatory answers and produced documents.[4] Entre then proffered to the court that the Goels had once more evaded discovery by filing perjurious answers. Pet. at A12-13.

The court granted Entre sixty days to conduct discovery aimed at substantiating its proffer. Upon com-

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[4] Although petitioners repeatedly characterize their production as comprising "literally thousands of documents" (pet. at 6, 19, 25 n.2), in fact they provided documents labelled Exhibits 1-222. While the volume of documents produced is not relevant, we note that the district court observed, "It is obvious that defendants hoped to bury their falsehoods in a mountain of detail which I shall assume was true and not incriminating . . . ." Pet. at A35.

pletion of discovery, Entre renewed its Rule 37 motion and evidentiary hearings were scheduled. On May 23, 1986, one business day before the hearings began, the Goels again filed supplemental answers. Pet. at A13-14.

Four days of hearings were held in May through July 1986, involving the testimony of seven witnesses and numerous documents; post-hearing briefs were requested and filed. On August 15, 1986, the court ruled that the evidence established "beyond any doubt" that the Goels had committed perjury in their sworn responses to a total of five interrogatories that had been put at issue in the hearings; committed perjury at several hearings; attempted to suborn perjury; and fabricated evidence and court documents.[5] Applying the principles established by *National Hockey League* and *Poulis*, and acting as well pursuant to its inherent power to preserve the integrity of the judicial process, the court granted Entre's motion for default and dismissal, and awarded Entre its attorneys' fees and costs incurred in connection with the hearings. Pet. at A14-15.

A hearing on damages was held on November 19, 1986. Judgment in favor of Entre was entered on December 3, 1986.

On August 31, 1987, the United States Court of Appeals for the Third Circuit affirmed the judgment for the reasons stated in the district court's opinion. The court of appeals found that

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[5] The court also deemed it "highly likely" that Anant Goel had sent three men to threaten a witness prior to the hearings, but found it unnecessary to make a finding to that effect for the purpose of ruling on the motion. Pet. at A34.

> the behavior of the defendants was so flagrant and inexcusable that default was not only justified but indeed mandated. The district judge, in a detailed and comprehensive opinion, painstakingly reviewed the defendants' repeated evasions of their obligations in the conduct of the litigation and their outright perjury on certain occasions.

Pet. at A4. A petition for rehearing filed by petitioners was denied by the Third Circuit on September 28, 1987. Pet. at A6-7.

REASONS WHY THE WRIT SHOULD BE DENIED

1. No reason exists for the granting of certiorari because the issues raised by petitioners are already controlled by well-established precedent.

This case is wholly controlled by the Federal Rules of Civil Procedure and Supreme Court precedent. The power to enter an order of default and dismissal as a sanction for discovery abuse is granted by Rule 37 and defined by *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643 (1976). This case fits squarely within the Rule as defined. It presents no new or important issue for the Court to address and its decision would not meaningfully supplement the jurisprudence of Rule 37.

Federal Rule of Civil Procedure 37(b)(2)(C) states that where a party fails to obey an order to provide discovery, the court in which the action is pending "may make such orders in regard to the failure as are just," including an order "dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party

. . . ."[6] The parameters of the Rule have been established by this Court. The sanction of default or dismissal is not authorized where the party's failure to comply with a discovery order is due to "inability." *Societe Internationale Pour Participations Industrielles et Commerciales v. Rogers*, 357 U.S. 197, 212 (1958). Default or dismissal is an appropriate sanction, however, for a party's "flagrant bad faith" and "callous disregard" of its responsibilities. *National Hockey League*, 427 U.S. at 643.

In reviewing petitioners' discovery misconduct—which included but was not limited to written and oral perjury—and holding that default and dismissal were warranted, the district court below found "no reported case of which I am aware which deals with party misconduct as egregious as that which has occurred and is occurring in this case." Pet. at A40. Petitioners have not challenged this or any other factual finding made by the district court; it follows necessarily that the court's conclusions of law were correct.[7] Or, as the Third Circuit held, petitioners' behavior "was so flagrant and inexcusable that default was not only justified but indeed mandated." Pet. at A4. This case is wholly controlled by Supreme Court precedent; it presents nothing new for this Court to decide, and the petition for certiorari therefore should be denied.

Indeed, this case is identical to *National Hockey League*—except that the conduct punished here was

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[6] Under Rule 37(d), this sanction also applies to a party's failure to provide discovery even in the absence of a prior court order.

[7] The correctness of the court's factual findings and decision is discussed below at pages 13-20.

far worse.[8] Rather than address that decision, however, petitioners have relegated it to a single sentence in their brief, implicitly conceding the lack of merit in their petition. Pet. at 15. They rely instead on *Hovey v. Elliott*, 167 U.S. 409 (1897), and *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982), but have misinterpreted and misapplied those cases.

In *Hovey v. Elliott*, 167 U.S. at 413, the Court held that due process was denied a defendant who suffered the striking of his answer and a default judgment as punishment for contempt of an order requiring him to pay into the court a sum of money the right to which was at issue in the suit. This holding was "substantially modified"[9] by *Hammond Packing Co. v. Arkansas*, 212 U.S. 322 (1909), where the Court ruled that it was consistent with due process for a state court to employ the identical sanction for failure to produce documents in accordance with a pretrial order. The bounds of due process have thus been defined by prohibiting use of the default sanction as mere punishment for failure to do that which the party may not have had the power to do (*Hovey*) but permitting entry of default in the discovery context as consistent with the presumption that the refusal to produce material (and, in this case, truthful) evidence is an admission that the wrongdoer's claims and defenses lack merit (*Hammond Packing*). *See Rog-*

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[8] In *National Hockey League*, sanctions were imposed because interrogatories went "substantially unanswered" despite numerous extensions and "several admonitions" by the district court. 427 U.S. at 642.

[9] *Societe Internationale Pour Participations Industrielles et Commerciales v. Rogers*, 357 U.S. at 209-10.

ers, 357 U.S. at 210. While the early jurisprudence in this area may be interesting, it is of no help to petitioners. The availability of default and dismissal as a sanction for discovery abuse is established by Rule 37(b)(2)(C) and has been reaffirmed by this Court.

Petitioners' reliance on *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982), is likewise misplaced; they argue incorrectly that it holds that any sanction imposed under Rule 37(b)(2) must be specifically aimed at the particular "claim" that was at issue in the order to provide discovery. Pet. at 17, 22-25. Rule 37(b)(2) contains a variety of different sanctions from which a district court may choose when faced with disobedience of a discovery order. *Insurance Corp. of Ireland* involved subsection (A) of the Rule, which states that the court may hold that certain facts "shall be taken to be established for the purposes of the action in accordance with the *claim* of the party obtaining the order. . . " (emphasis added).

Subsection (C) of Rule 37(b)(2)—the subsection at issue in the present case—goes farther than subsection (A) and allows the court to enter an order of default or dismissal as a sanction for discovery abuse. Necessarily, an order entered pursuant to this subsection need not be tailored to a specific claim of a party.

Even if the district court were required to find that the discovery order related to the parties' claims, this would not help petitioners because the court found that the interrogatories and the perjurious answers were directly relevant. The court found the subject matter of three of the interrogatories in question "highly material to the issue of damages allegedly

suffered by defendants sought in their counterclaim." Pet. at A40. Additionally, "[t]ruthful answers [to those interrogatories] would have disclosed flagrant violations of the preliminary injunction on the part of all three defendants." *Id.* These interrogatories were also relevant insofar as the injunction enforced a covenant-not-to-compete contained in the franchise agreement, relief specifically sought in Entre's complaint. A truthful answer to the fourth interrogatory would have revealed bank accounts that held the proceeds of petitioners' illicit activities, relevant again to their damages and their violation of the injunction. Pet. at A38. And the fifth concerned offers to purchase petitioners' franchise, in response to which petitioners referenced and produced two fraudulent offers. The court found the value of the franchise to be a "material issue relating to defendants' claim for damages." Pet. at A40.

2. The writ should be denied because the courts of appeal have consistently followed this Court's decisions in determining whether to impose sanctions under Rule 37 and there is no conflict in the circuits for this Court to address.

Petitioners argue that the appellate courts have been "struggling to devise consistent guidelines" under Rule 37 and that a "patchwork quilt" has resulted in this area of the law. Pet. at 16. They say that a writ of certiorari must be granted because "this Court must resolve the question of whether the express consideration and application of lesser sanctions is a necessary prerequisite in the application of Rule 37 sanctions." Pet. at 17. The cases cited in their own brief dispel this notion.

The courts of appeal are of course required to follow the dictates of *National Hockey League* in cases involving default or dismissal under Rule 37. Petitioners concede that the Second, Fifth, Sixth, Eleventh, and District of Columbia Circuits all employ the same analysis in Rule 37 cases,[10] inexplicably omitting the Third Circuit from this list.[11] Petitioners note that the First Circuit does not require the consideration of alternative sanctions, as do the other courts, but cite a case in which the court correctly applies the principles set forth in *National Hockey League*.[12]

The decision whether to impose sanctions under Rule 37—as well as the approach to be taken in such

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[10] Although petitioners state that "the Eleventh Circuit appears to differ from panel to panel" (pet. at 16), a comparison of the two cases they cite fails to reveal any basis for that statement. *See Pesaplastic, C.A. v. Cincinnati Milacron Co.*, 799 F.2d 1510 (11th Cir. 1986); *Camp v. Oliver*, 798 F.2d 434 (11th Cir. 1986).

[11] As with their discussion of the Eleventh Circuit caselaw, petitioners' remark that the Third Circuit "differs" from panel to panel is unsupported by the two cases cited in their brief. In fact, those cases, *Poulis v. State Farm Fire and Casualty Co.*, 747 F.2d 863 (3d Cir. 1984), and *Scarborough v. Eubanks*, 747 F.2d 871 (3d Cir. 1984), were argued before and decided by the same panel on the same day, and involved a single attorney's conduct before a single district judge. In both cases, the panel applied the same six-part test—including a review of possible alternative sanctions.

[12] In *Damiani v. Rhode Island Hospital*, 704 F.2d 12, 15 (1st Cir. 1983), cited by petitioners, the court noted quite correctly that "[t]here is nothing in [Rule 37] that states or suggests that the sanction of dismissal can be used only after all the other sanctions have been considered or tried." The court followed *National Hockey League* in affirming a dismissal imposed as a sanction for discovery abuse. *Id.* at 15-16.

cases—is committed to the discretion of the lower courts. The circuits have adopted remarkably uniform approaches; as a matter of discretion, six out of seven have determined that a review of alternative sanctions is required. All seven explicitly follow the principles of *National Hockey League* and *Rogers* and all impose the extreme sanction of default and dismissal only where it is found to be warranted. There is no conflict for this Court to settle.

Even if there were a conflict over whether a review of alternative sanctions is a prerequisite to ordering default and dismissal—the only "conflict" petitioners assert—petitioners received the benefit of the more stringent test because the district court weighed that factor in reaching its decision on their case. Pet. at A48-49. Assuming then that this argument was not entirely frivolous, petitioners would have no standing to make it.

3. Petitioners are incorrect that the writ should be granted because they were sanctioned too severely; the guidelines for imposing the sanction of default and dismissal ensure that it will be reserved for extreme cases and the district court properly applied those guidelines to the facts of this case.

Petitioners argue incorrectly that a writ of certiorari should be granted because the sanction imposed upon them was "unjust" and unrelated to the merits of the case.[13] This Court and the Third Circuit have recognized that default and dismissal is an extreme sanction and have established guidelines for its

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[13] As discussed above at pages 10-11, the district court found that the interrogatories in question were directly relevant to the merits of the case.

imposition that take this into account. The district court properly applied those guidelines to the facts before it in sanctioning petitioners for their misconduct.

When reviewing sanctions imposed under Rule 37, "[t]he question, of course, is not whether this Court, or whether the Court of Appeals, would as an original matter have dismissed the action; it is whether the District Court abused its discretion in so doing." *National Hockey League*, 427 U.S. at 642. As a response to the admonition in *National Hockey League* that default and dismissal is an "extreme" sanction (*id.* at 643), the Third Circuit has developed a six-part test that is to be applied in determining whether to impose that sanction under Rule 37: the court must balance (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) the history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense. *Poulis v. State Farm Fire and Casualty Co.*, 747 F.2d 863, 868 (3d Cir. 1984).

In *National Hockey League*, this Court held that it was a proper exercise of district court discretion to dismiss claims where interrogatories remained "substantially unanswered" despite numerous extensions and "several admonitions" by the district court. *Id.* These facts pale in comparison to the following ones, which were found by the court below in accordance with the Third Circuit *Poulis* test:

1. The petitioners were "personally responsible for the corrupt and improper prosecution of their case." Pet. at A42. In addition to personally signing the perjurious interrogatory answers, one or all of the petitioners were found to have acted in contempt of court orders; "perjured themselves repeatedly"; suborned perjury; fabricated documents and affidavits to be used as court exhibits; and "thwarted discovery and made a mockery of the pretrial process in every possible fashion." Pet. at A42-45.

2. The petitioners' misconduct was prejudicial to Entre. The district court found that Entre had suffered substantial costs and delay in prosecuting its claims; its time was devoted instead to pursuing petitioners through the civil contempt process and in perjury hearings. As the court stated, "Years have been consumed with motions and hearings, while the merits of Entre's case are not advanced at all." Pet. at A45-46. The court found that permitting the case to continue would present Entre with "the prospect of going to trial with inadequate and untruthful information about their case. It would be [of] little use to attempt to supplement and correct the discovery already provided, because one can believe nothing defendants say." Pet. at A46.

3. Petitioners' conduct in the district court was "consistently dilatory." Pet. at A46. They failed to serve timely discovery responses, requiring Entre to file a motion to compel (pet. at A46); ignored fines and "only contrived to stave off their arrest by interposing" untimely, inadequate interrogatory answers (A46-47); "did not participate at all" in the preparation and filing of a pretrial stipulation (A47); and filed two "supplemental" sets of perjurious in-

terrogatory answers even after receiving "'one final opportunity' to redeem their case because of the anticipated diligent and effective conduct of their new counsel" (A47).[14] The court concluded, "The net effect of this conduct is that the defendants have successfully deflected meaningful discovery for the two years that this suit has been pending." Pet. at A47.

4. The petitioners' conduct was "wilful and in bad faith." Pet. at A47. The court noted that *Poulis*, the leading Third Circuit case, concerned misconduct on the part of counsel who clashed with the court and repeatedly missed deadlines because of family illnesses. In contrast, the court found, "This case concerns defendants who personally are willing to prepare fraudulent affidavits for use in court proceedings. The differences between the two cases are clear." Pet. at A48.

5. The court examined the possibility of imposing alternative sanctions, but found that "sanctions other than dismissal and default are meaningless to the defendants." With approval, the court quoted the magistrate, who had said, "I have been led to the inescapable conclusion that there is no sanction in the world that will cause these people, the Goels, to comply with a court order." Pet. at A48. The court noted that despite prior sanctions including referral for criminal prosecution, civil contempt, attorneys' fees, monetary penalties, and the threat of arrest, "*no* sanction has yet been successful in coercing the Goels to follow the rules" and "there have been no satis-

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[14] As the court found, petitioners' misconduct was consistent throughout the case, even though they were represented at various times by five different law firms. Pet. at A45.

factory responses to this date." Pet. at A48, A49 (emphasis in original).

6. Finally, the court balanced the merits of both parties' claims. It reiterated its holding, made earlier in the case, that "the evidence establishes conclusively, and essentially without contradiction, that since at least mid-1983 defendants have systematically and continuously perpetrated a major fraud upon plaintiff." The merits of petitioners' claims and defenses, on the other hand, were found to be "at best unclear" because their own misconduct had made it "impossible to penetrate and evaluate them." Pet. at A50. Noting that it had reviewed an "extraordinary amount of evidence," the court found, "None of it disclosed fraudulent conduct on Entre's part; much of it discloses fraudulent conduct on defendants' part both before and after the termination of the franchise." Pet. at A50.

Given these findings, the court acted well within its discretionary authority when it imposed the sanction of default and dismissal.[15]

Additionally, the court committed no error by subjecting Computomat to the same sanctions as the Goels. It was agreed and understood by all from the beginning of the case that the Goels and Computomat were synonymous.[16] At an early hearing, the court

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[15] Petitioners' assertion that the sanction imposed was an "improper way to deal with perjury" (pet. at 20) does not require rebuttal.

[16] The Computomat certificate of incorporation listed Anant B. Goel as the entire board of directors. Cert. of incorp., filed Jan. 3, 1983. Goel testified that when he said "I," he was referring to himself and Computomat. Hearing tr., Dec. 26, 1984 at 42.

found a "unity" of Computomat and the Goels. Hearing tr., Oct. 11, 1984 at 177. Petitioners have never contested this finding. Only once did the Goels attempt to draw a distinction between themselves and their corporate shell. Computomat was in bankruptcy when the court granted Entre's request that it be permitted discovery into the perjury issue. All other discovery by either side had been suspended by the court. Opinion, Jan. 8, 1986, tr. at 15. Computomat obtained a partial lifting of the automatic bankruptcy stay and requested the district court to permit it to rejoin the litigation. Order, Feb. 18, 1986. Thus, Computomat was a participating litigant at the perjury hearings, and the misdeeds of its officer and board of directors—Anant Goel—were its misdeeds as well.[17]

Indeed, the unity of the Goels and their corporate shell was so well understood that it was never challenged by petitioners in the district court. Therefore, the Court should not address this argument. *Hormel v. Helvering*, 312 U.S. 552, 556 (1941).[18] But even if

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In their interrogatory answers, the Goels identified Computomat as their "corporate name." Ans. to int. no. 2 of first set, dated Feb. 21, 1986.

Because Computomat's "independence" from the Goels was not argued to the district court (see below), the court did not discuss this issue in its opinion. The exhibits and orders cited in this portion of respondent's brief are part of the record in the district court.

[17] Computomat also was specifically held liable for the fraud perpetrated upon Entre, for the subsequent contempt of the injunction, and for the attorneys' fees awarded to Entre in connection with the contempt proceedings. Pet. at A16, A28.

[18] "It is only in exceptional cases coming here from the federal courts that questions not pressed or passed upon below are reviewed." *Duignan v. United States*, 274 U.S. 195, 200 (1927).

it had been raised, the district court clearly would have been required to reject it. Under New Jersey law, "the purpose of the doctrine of piercing the corporate veil is to prevent an independent corporation from being used to defeat the ends of justice, . . to perpetrate fraud, to accomplish a crime, or otherwise to evade the law . . . ." *New Jersey v. Ventron Corp.*, 94 N.J. 473, 468 A.2d 150, 164 (1983). The veil will be pierced where a corporation has "no separate existence" but is "merely a conduit" for its owner. *Id.* Where the corporate officer's wrongdoing smacks of immoral or illegal conduct "[t]here is no veil to pierce. A corporation, as such, has no moral character. The moral responsibility of a corporation is one and the same with the moral responsibility of the individuals who give it direction. . . ." *Trap Rock Indus., Inc. v. Kohl*, 59 N.J. 471, 284 A.2d 161, 167 (1971), *cert. denied*, 405 U.S. 1065 (1972). It clearly was necessary and proper to pierce the Computomat veil to effectuate the sanctions imposed on the Goels.[19]

Finally, while the facts demonstrate that petitioners were wholly worthy of the sanctions imposed on them, the district court's decision serves a broader purpose as well. In *National Hockey League*, this Court rec-

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Petitioners have not argued that their failure to raise this point in the district court was due to exceptional circumstances.

[19] Moreover, questions of piercing the corporate veil are well-settled matters of state law that turn on the particularized facts of each case. Petitioners present no important legal issue requiring this Court's attention. To the extent that petitioners' argument is that it was wrong to pierce the Computomat veil "sub silentio" (pet. at 18), we note again that no findings were made in this regard by the district court because petitioners never raised the point.

ognized the valuable deterrent effect of Rule 37 sanctions:

> [H]ere, as in other areas of the law, the most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent. If the decision of the Court of Appeals [reversing a dismissal sanction] remained undisturbed in this case, it might well be that *these* respondents would faithfully comply with all future discovery orders entered by the District Court in this case. But other parties to other lawsuits would feel freer than we think Rule 37 contemplates they should feel to flout other discovery orders of other district courts.

427 U.S. at 643 (emphasis in original). Aside from the implications for the immediate case, this Court cannot pardon petitioners because doing so would strip Rule 37 of any deterrent effect it might have on similarly inclined litigants.

4. The writ should not be granted because the petitioners have failed to address an entirely separate alternative ground for the district court's decision.

There is an independent basis for the district court's decision that petitioners have not addressed at all: petitioners were sanctioned pursuant to the court's inherent power to protect the integrity of the judicial process. Because this ground is sufficient to uphold the court's decision independent of its exercise of discretion under Rule 37 and because it remains un-

challenged, this Court has no reason to grant the petition for a writ of certiorari.

As the district court found, petitioners' behavior went beyond discovery abuse and created a separate legitimate basis for the exercise of the court's discretion. They pursued a remorseless pattern of perjury, subornation of perjury, and fabrication of evidence, and brazenly prepared a false affidavit under the name of the court they intended to defraud. *See* A33-34. The court found that petitioners "made a mockery" of "the entire court system" (hearing tr., Nov. 19, 1986 at 45) and, finally, imposed sanctions to "preserve the integrity of the judicial process" (pet. at A40).

Thus, the need to preserve the court's processes stands as a second—and unchallenged—pillar supporting the judgment. The federal courts possess the inherent powers that are "necessary to the exercise of all others," *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980); and the "well-acknowledged" inherent power to levy sanctions for abusive litigation practices. *Link v. Wabash R. Co.*, 370 U.S. 626, 632 (1962). These powers include that of defaulting or dismissing a party who has "willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice." *Wyle v. R.J. Reynolds Industries, Inc.*, 709 F.2d 585, 589 (9th Cir. 1983).

Even without the authority of Rule 37, the district court had the power to remedy the abuses heaped upon it by petitioners. Because of this separate basis for the court's award, this Court need not reach the arguments put forth by petitioners and therefore should not grant a writ of certiorari.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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